

REMARKS

This application pertains to novel solid lipid particles of bioactive agents and methods for the manufacture and use thereof.

Claims 1-40, 42, 44 and 45 are pending.

Applicants note that on the cover sheet for the present office action, the Examiner has indicated that only claims 16 - 36, 40, 42, 44 and 45 are pending. This is not correct.

Claims 1-15 and 37-39 have withdrawn from consideration as drawn to non-elected subject-matter, but have not been cancelled.

The claims ***under consideration*** are therefore claims 16 - 36, 40, 42, 44 and 45. Claims 1-15 and 37-39, although withdrawn from consideration, have not been cancelled and are therefore still pending. Accordingly, all of claims 1-40, 42, 44 and 45 are still pending.

It is respectfully requested that the Examiner correct the cover sheet to reflect that claims 1-40, 42, 44 and 45 are pending, although claims 1-15 and 37-39 have withdrawn from consideration. More specifically, the cover sheet should indicate that while claims 16 - 36, 40, 42, 44 and 45 are the claims under consideration, they are not the only claims pending.

Applicants have avoided cancelling the non-elected claims as it is their hope that said claims will eventually be rejoined.

Reconsideration and withdrawal of the restriction requirement is respectfully requested

for the reasons already stated in the response to the restriction requirement.

In case the Examiner still does not find it possible to withdraw the restriction requirement, it is respectfully requested that the non-elected subject matter be rejoined with the elected subject matter upon allowance of claims drawn to elected subject matter.

Claims 16-36, 40, 42 and 44-45 stand rejected under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486).

The Irvin reference has a filing date of July 11, 2002 and the Westesen reference has a filing date of December 2, 1996.

The accompanying declarations under Rule 131 establish that Applicants' invention was made prior to July 11, 2002 and that Applicants continued to diligently pursue the invention and the filing of a patent application from the date of conception through the date their priority application was filed, on October 18, 2002.

The Examiner will note that the invention record attached to the Rule 131 declarations refers to prior art documents LeA35177 and WO95/21688. LeA35177 is the assignee's internal docket number and corresponds to WO03/034822. Both WO95/21688 and WO03/034822 are discussed in the specification, and both have been made of record through an IDS submitted April 24, 2008.

Applicants' invention was therefore completed prior to the effective date of Irvin (US 7,276,184), and Irvin is not an effective reference against the present claims.

The rejection of claims 16-36, 40, 42 and 44-45 16-36, 40, 42 and 44-45 under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486) should therefore now be withdrawn.

Claim 42 stands rejected under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486) and further in view of Rochling et al. (US 6,602,823). As discussed above, however, the Irvin reference is not effective against the present claims, and the rejection of claim 42 under 35 U.S.C. 103(a) as obvious over Irvin (US 7,276,184) in view of Westesen et al. (US 5,885,486) and further in view of Rochling et al. (US 6,602,823) should therefore now be withdrawn.

In view of the present amendments and remarks it is believed that claims 1-40, 42, 44 and 45 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicant requests that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

Respectfully submitted,  
NORRIS, McLAUGHLIN & MARCUS

By /William C. Gerstenzang/  
William C. Gerstenzang  
Reg. No. 27,552

WCG/tmo

875 Third Avenue- 8<sup>th</sup> Floor  
New York, New York 10022  
(212) 808-0700